

REMARKS

The indication of allowable subject matter in claims 2, 6, 9 and 12 is acknowledged and appreciated. For the following reasons, it is respectfully submitted that all claims are in condition for allowance.

The Examiner has maintained the rejection of claims 1, 3-5, 10 and 11 over Sawai et al., however, it does not appear that the Examiner has responded to Applicant's arguments directed to the independent patentability of claims 3-5, 10 and 11 as set forth in the amendment filed May 22, 2003. Those arguments are reprinted below for the Examiner's convenience. If the rejections are maintained, it is respectfully requested that the Examiner make of record his reasons for maintaining those rejections as required under MPEP § 707.07(f) under the section entitled "Answer All Material Traversed".

Claims 1, 3-5, 10 and 11 stand rejected under 35 U.S.C. § 102 as being anticipated by Sawai et al. ('724). This rejection is respectfully traversed for the following reasons. The Examiner alleges that the "first measurement without any hCG solution would be the before measurement ... so that proper measurements can be taken and relied on as being precise and free of unwanted background (see fig. 4 at 0 percent absorption and 0 time)." As a preliminary matter, it is respectfully submitted that Sawai et al. does not suggest the problems associated with unwanted background. Only Applicant's specification considers such problems and provides a means by which to solve those problems (*see, e.g.*, pages 27-30 of Applicant's specification), rendering the Examiner's assertion as being based solely on improper hindsight reasoning. Sawai et al. merely describes the conventional manner of unknowingly assuming that any inherent turbidity (i.e., before reagent mixed therein) of the solution to be tested is non-existent or negligible.